

Court of Appeals, State of Michigan

ORDER

Jacob Hagg v Board of State Canvassers

Docket No. 361579

Michael J. Riordan
Presiding Judge

Michael F. Gadola

Thomas C. Cameron

Judges

The motion to permit out-of-state attorney, Jacob R. Binnall, to appear and practice on behalf of plaintiff is GRANTED for this case only, effective on the date of the Clerk's certification of this order. However, Shawn M. Flynn (P82209) will appear as counsel of record for this party. MCR 8.126(A).

The Clerk's Office shall e-mail a courtesy copy of this order to the State Bar of Michigan at prohacvice@mail.michbar.org immediately upon issuance.

The motion to file supplemental exhibits to the complaint for mandamus is GRANTED.

The complaint for mandamus is DENIED. "Mandamus is the appropriate remedy for a party seeking to compel action by election officials." *Citizens Protecting Mich's Constitution v Secretary of State*, 280 Mich App 273, 283; 761 NW2d 210 (2008). Although mandamus may lie to compel administrative action, it may not be used to control administrative discretion. In other words, mandamus will not "lie to compel the exercise of discretion . . . in a particular manner." *Teasel v Dep't of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984).

Plaintiff failed to meet his heavy burden of demonstrating his "entitlement to the extraordinary remedy of a writ of mandamus." *White-Bey v Dep't of Corrections*, 239 Mich App 221, 223; 608 NW2d 833 (1999). Plaintiff is seeking to be placed on the August 2022 partisan primary ballot for Michigan's Seventh Congressional District, a Lansing centered, multi-county district. MCL 168.544c sets forth the general configuration of primary nominating petitions. Petitions to be circulated countywide must be on a form prescribed by the Michigan Secretary of State that substantially conforms to MCL 168.544c. See MCL 168.544d. MCL 168.544c(1) requires each signatory to: print his or her name; provide his or her street address or rural route, and the assigned zip code; attach his or her signature; and enter the month, day, and year he or she signed the petition. The Legislature has directed that petitions to



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 6, 2022

Date


Chief Clerk

be circulated countywide, like the petitions in issue, must “provide for the identification of the city or township in which the person signing the petition is registered.” MCL 168.544d.

Plaintiff has provided some, but not all, of the petitions he filed. Over half of the signatures on these petitions that were deemed invalid by the Michigan Bureau of Elections were rejected because they included “dual jurisdiction errors.” A dual jurisdiction entry exists where the signatory enters on the petition the names of multiple jurisdictions either in the space provided for the signatory’s registered city or township or in another box on the petition (often if not exclusively in the box provided for the signatory’s street address or rural route). The Bureau invalidated signatures on plaintiff’s petitions where the signatory entered the name of a municipality and the name of another political subdivision that could be considered either the name of another city or township, or the name of a Michigan county. The Bureau of Elections has access to records that could be used to verify whether these signatories had correctly identified his or her registered municipality, and therefore whether the municipality identified is in fact the proper jurisdiction, irrespective of the extraneous information provided. The record before us shows that the Bureau did not employ such an approach here. We strongly encourage the Bureau to initiate a process for doing so and thereby ensure that the Board effectively executes a procedure to invalidate signatures because of dual jurisdiction entries.

Nonetheless, plaintiff has not provided enough nominating petitions that include enough signature entries invalidated as dual jurisdiction entries to overturn the decision of the Michigan Board of Elections not to certify plaintiff for the August 2022 primary ballot. Even if all of these signature entries were deemed valid, plaintiff would still not have collected the required number of signatures. The burden was on him to do so. Accordingly, plaintiff is not entitled to relief.


Presiding Judge

Riordan, J., I concur in part and dissent in part. Specifically, I agree with the majority’s disposal of the miscellaneous orders filed by plaintiff but disagree that he is not entitled to relief.

MCL 168.544d provides that on a “countywide form,” the Secretary of State “shall provide for identification of the city or township in which the person signing the petition is registered.” An elector who identifies his or her city or township of registration has complied with the directives of MCL 168.544d, and a further identification of additional information such as his or her county of registration does not, logically or legally, extinguish the separate identification of city or township. In other words, the “dual jurisdiction” error identified by the Board of State Canvassers (the Board) invalidates a signature not because the elector has failed to provide the statutorily required information or because the elector has provided incorrect information, but because the elector has provided additional information that is not required by statute or the petition itself. I can identify no provision within the Michigan Election Law that would permit the Board to do so in this instance. Therefore, I conclude that invalidating a signature for a “dual jurisdiction” error exceeds the Board’s statutory authority.

As we recently recognized in *Johnson v Bd of State Canvassers*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 361564); slip op at 9, “signatures on petitions are presumed valid and . . . the burden is on the challenger to the signatures to prove by clear, convincing, and competent evidence that the signatures are invalid.” See also *Farm Bureau Mut Ins Co of Mich v Comm’r of Ins*, 204 Mich App 361, 367-368; 514 NW2d 547 (1994) (“[P]etition signatures are presumed valid . . .”). When the canvassing authority investigates a signature and determines that it is in violation of statute, the “presumption of legality” is extinguished, and the burden shifts to the candidate to show its validity. See *Fontana v Lindholm*, 276 Mich 361, 365; 267 NW 860 (1936). For instance, “once the validity of the signatures is called into question and the affidavits are shown to be improper, the presumption of propriety of the petitions disappears.” *Grosse Pointe Farms Fire Fighters Ass’n v Caputo*, 11 Mich App 112, 118-119; 157 NW2d 695 (1968). See also MCL 168.552(13) (providing that “[i]f the qualified voter file indicates that, on the date the elector signed the petition,” the elector was not registered to vote or was not registered to vote in the city or township designated on the petition, there is a “rebuttable presumption that the signature is invalid”).

In this case, the Board invalidated 261 challenged signatures on the basis of the “dual jurisdiction” error, which is defined as occurring when “the signer wrote the names of two or more jurisdictions in the space for the city or township where registered.” As a result, plaintiff was 52 signatures short of placement on the ballot. The majority reasons that because plaintiff has only provided this Court with evidence that, at most, 39 of those 261 signatures should have been deemed valid, he has failed to sustain his burden of proof for a writ of mandamus. I respectfully disagree. This blanket invalidation was unauthorized by statute. Further, Director of Elections Jonathan Brater seemingly concedes in his affidavit that plaintiff would have been placed on the ballot had the blanket invalidation not been imposed.¹ In my judgment, plaintiff is entitled to discretionary relief in the form of mandamus because the blanket invalidation imposed by the Board was both unauthorized by statute and is simply inconsistent with common sense.²

Additionally, I fully agree with Justice ZAHRA’s recent observation that “[t]he people of Michigan deserve thoughtful, cogent, and well-reasoned” judicial decisions, *Johnson v Bd of State Canvassers*, ___ Mich ___, ___; ___ NW2d ___ (2022) (Docket No. 164461) (Docket No. 164461) (ZAHRA, J., *concurring*), and that the extremely abbreviated timeline imposed by the Michigan Election Law renders it difficult to issue such decisions, much less have them subject to appellate review. I respectfully encourage the Legislature to amend the Michigan Election Law to allow for meaningful judicial review of the Board’s decisions. Regardless, even under these extenuated circumstances, I believe that plaintiff

¹ Specifically, he states that “[u]nless the Court agrees with Mr. Hagg that dual jurisdiction entries should now be considered valid, Mr. Hagg would have a sufficient nominating petition only if at least 52 of the 215 signatures determined invalid for other reasons were actually valid.”

² The “dual jurisdiction” invalidation would necessarily apply whenever an elector lists the fact that he or she resides in a particular county. For example, an elector who lists “Lansing, Ingham” in the box for “City or Township” would be subject to signature invalidation because he or she has listed two jurisdictions.

has sustained his burden for a writ of mandamus, and I respectfully dissent from the majority's contrary conclusion.³

³ I acknowledge that the apparent June 3 deadline for certification has passed, but this case is not necessarily moot. See *Johnson*, ___ Mich at ___ (Docket No. 164461) (BERNSTEIN, J., *dissenting*) (“Although the Secretary of State must certify eligible candidates by June 3, see MCL 168.552(14), a swift decision by this Court could allow for a certification decision to be reversed in time for county clerks to receive corrected absentee ballots by June 18, see MCL 168.714(1).”).